



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	9 VAC 25
VAC Chapter Number:	580
Regulation Title:	Underground Storage Tanks: Technical Standards and Corrective Action Requirements
Action Title:	Amendments of UST Technical Standards and Corrective Action Requirements
Date:	October 1, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary *

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The purpose of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation (UST Technical Regulation) are to reduce the number of releases from Underground Storage Tanks, increase the ability to quickly detect and minimize contamination resulting from these releases, and ensure adequate cleanup of releases. Persons owning these tanks are required to provide notification to DEQ of the location, contents, and construction of these tanks. The regulation contains standards for UST system design and construction,

operating requirements, and release detection. Also, the regulation contains requirements for investigating and cleaning up releases from underground storage tanks and piping.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Legal authority for the Underground Storage Tank Technical Regulation comes from Sections 9002 through 9006 of U.S. Public Law 98.616 and Sections 62.1-44.34:8 and 9 of the Code of Virginia. Section 62.1-44.34:9.8 of the Code of Virginia provides the State Water Control Board with the authority to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.

The UST Technical Regulation is very similar in scope to the Federal UST Regulation.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

Only one comment was received during the public comment period. The person commenting stated a belief that the standards for underground storage tanks should be removed from the Virginia Uniform Statewide Building Code and left entirely under the Department of Environmental Quality. This person indicated that the department tasked with creating the regulations should be the one enforcing them, thereby, eliminating "runarounds."

The DEQ Storage Tank Program Management has reviewed this comment and we appreciate the extra complexities that tank installers have when working with multiple governmental agencies. State Law, however, requires that this regulation be incorporated into Virginia Uniform Statewide Building Code and administered by local building officials.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

Goals of the UST Technical Regulation include: (1) reducing the number of releases of petroleum and hazardous substances from USTs; (2) increasing the ability to quickly detect and minimize soil and ground water contamination caused by releases; and (3) ensuring adequate cleanup of contamination caused by such releases. The UST Technical Regulation has been in place for approximately 12 years. As a result of the regulation, many leaking USTs have been taken out of service and contaminated sites have been cleaned up to protect human health and the environment.

The Department of Environmental Quality staff tasked with implementing the UST Technical Regulation believe that the regulation is clearly written and experience over the past 12 years suggests that the regulation is understandable to most members of the regulated community.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Underground Storage Tank Regulations exist at the Federal Level as well as at within the Commonwealth. One alternative that Virginia has is to repeal its UST Technical Regulation and rely on the Federal UST regulation. This alternative is not recommended. Placing the program and regulation back at the Federal level will result in delays for tank owners and persons wishing to clean up releases. These delays will likely result in increased costs to the regulated community and increased damages to Virginia's environment.

A second alternative is to leave the UST Technical Regulation as it presently exists. This option is not recommended. Several Virginia laws have been modified since the UST Technical Regulation was promulgated. Conflicts between the regulation and current laws creates confusion, increases staff time explaining the discrepancies to the regulated community, and may hinder enforcement actions.

A third alternative is to amend the UST Technical Regulation to incorporate statutory changes that have been made since the regulation was promulgated. This alternative is recommended as the least burdensome to the citizens of the Commonwealth. Virginia's UST Program and regulation are intended to meet the needs of the citizens of the Commonwealth of Virginia. Amending the regulation will reduce confusion caused by discrepancies between the regulation and current Virginia Laws. Amending the regulation also will allow DEQ to more effectively enforce the regulation, thereby, reducing risks to human health and the environment posed by leaking underground storage tanks.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The DEQ recommends that the UST Technical Regulation be amended to reflect changes in statutes that were made since the regulation was adopted.

Substance

Please detail any changes that would be implemented.

The DEQ would recommend adding a provision that would allow the board to require an owner to submit a notification form to report current tank information.

In addition, to other amendments which may be necessary in response to public participation efforts, several amendments would be proposed that would clarify the regulation and/or conform the regulation to state and federal laws and regulations. For example:

Section 10, Definitions

? **Underground Storage Tank** or **UST** means any one...This term does not include any: ...

2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of greater than 5,000 gallons and used for storing heating oil.

Change item #2 under the UST definition to read:

2. Tank used for storing heating oil for consumption on the premises where stored.

This matches the definition of UST found in the Law (§62.1-44.34:8)

? **Department of Waste Management**

Delete this definition. Section 10.1-1183 of the Virginia Code states: "Whenever in this title and in the Code of Virginia reference is made to the Department of Air Pollution Control, the Department of Waste Management or the Council on the Environment, or any division thereof, it shall mean the Department of Environmental Quality."

? Add Definition for "Director"

Director means the director of the Department of Environmental Quality

? Section 130.C

Remove * from table and remove the accompanying explanation. Heating oil tanks greater than 5,000 gallons are exempt from the requirements of the UST Technical Regulation.

? Section 290

This section is not found in the Federal UST Regulation. Changes in other Virginia Regulations since the UST Technical Regulation was promulgated and twelve years experience of managing

UST cases indicates that this section is not needed. We recommended deleting Section 290 of the regulation.

? Section 320.C

Change "Department of Waste Management" to "Department of Environmental Quality."

Section 10.1-1183 of the Virginia Code states: "Whenever in this title and in the Code of Virginia reference is made to the Department of Air Pollution Control, the Department of Waste Management or the Council on the Environment, or any division thereof, it shall mean the Department of Environmental Quality."

? Section 360

Change "executive director" to "director"

Section 10.1-1185 of the Code of Virginia states:

All powers and duties conferred or imposed upon the Executive Director of the Department of Air Pollution Control, the Executive Director of the State Water Control Board...are continued and conferred or imposed upon the Director of the Department of Environmental Quality or his designee. Wherever in this title and in the Code of Virginia reference is made to the head of a division, department or agency hereinafter transferred to this department, it shall mean the Director of the Department of Environmental Quality."

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation has no bearing or effect on the institution of family or on family stability.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purposes of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation (UST Technical Regulation) are to reduce the number of releases from Underground Storage Tanks , increase the ability to quickly detect and minimize contamination

resulting from these releases, and ensure adequate cleanup of releases. The goals for the amended regulation remain the same as the goals for the present regulation. The regulation needs to be amended to incorporate changes in the law made since the regulation was written.

Need*

Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied

The UST Technical Regulation continues to be needed to protect human health and the environment. The regulation needs to be amended, however, to incorporate changes in the law. The amendment of the regulation will help the regulated community to better understand the regulation and also enable DEQ to more effectively enforce the requirements of the regulation.

Substance*

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

Possible amendments to the regulation include (1) adding provisions requiring those UST systems that were not upgraded by the December 1998 deadline to be closed in accordance with the regulation; (2) adding a provision that would allow the board to require an owner to submit a notification form to report current tank information; (3) clarifying and conforming the regulation to state and federal laws and regulations; and other changes determined to be necessary in response to public participation activities.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.

Underground Storage Tank Regulations exist at the Federal Level as well as at within the Commonwealth. One alternative that Virginia has is to repeal its UST Technical Regulation and rely on the Federal UST regulation. This alternative is not recommended. Placing the program and regulation back at the Federal level will result in delays for tank owners and persons wishing to clean up releases. These delays will likely result in increased costs to the regulated community and increased damages to Virginia's environment.

A second alternative is to leave the UST Technical Regulation as it presently exists. This option is not recommended. Several Virginia laws have been modified since the UST Technical Regulation was promulgated. Conflicts between the regulation and current laws creates confusion, increases staff time explaining the discrepancies to the regulated community, and may hinder enforcement actions.

A third alternative is to amend the UST Technical Regulation to incorporate statutory changes that have been made since the regulation was promulgated. This alternative is recommended as the least burdensome to the citizens of the Commonwealth. Virginia's UST Program and regulation are intended to meet the needs of the citizens of the Commonwealth of Virginia. Amending the regulation will reduce confusion caused by discrepancies between the regulation and current Virginia Laws. Amending the regulation also will allow DEQ to more effectively enforce the regulation, thereby, reducing risks to human health and the environment posed by leaking underground storage tanks.

Public Participation*

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period. Comments should be sent to Fred K. Cunningham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, (804) 698-4285, fax (804) 698-4266, or email fkunningh@deq.state.va.us.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the

proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.